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**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

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SHELL COMPANY OF CALIFORNIA, a Corporation,  
tion,

Appellant,

vs.

PACIFIC STEAMSHIP COMPANY, a Corporation  
of Portland, Maine, Claimant and Owner of the  
Steamship "ADMIRAL GOODRICH," Her  
Tackle, Apparel and Furniture,

Appellee.

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**Apostles on Appeal.**

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Upon Appeal from the United States District Court  
for the Western District of Washington,  
Northern Division.

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**FILED**

MAR 23 1922

F. D. MONCKTON,  
CLERK.



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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### **Names and Addresses of Counsel.**

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307 Lowman Building, Seattle, Washing-  
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1226 Rust Building, Tacoma, Washington.

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1226 Rust Building, Tacoma, Washington.

W. A. JOHNSON, Esq., Proctor for Appellee,  
L. C. Smith Building, Seattle, Washington.

[1\*]

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In the District Court of the United States in and  
for the Western District of Washington,  
Northern Division.

No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-  
ration,

Libelant,

vs.

---

\*Page number appearing at foot of page of original certified Apostles  
on Appeal.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corpora-  
tion of Portland, Maine,

Claimant.

### **Statement.**

Time and commencement of suit — September 2,  
1920.

### **NAMES OF PARTIES TO SUIT.**

Shell Company of California, a corporation, libel-  
lant and appellant.

Pacific Steamship Company, a corporation of Port-  
land, Maine, claimant and appellee.

### **DATES WHEN PLEADINGS WERE FILED.**

Libel, September 2, 1920,

Exceptions to libel, September 23, 1920,

Decision sustaining exceptions to libel, November  
12, 1920,

Amended libel, January 20, 1921,

Exceptions to amended libel, February 1, 1921.

Decision denying exceptions, February 25, 1921,

Answer to amended libel, March 14, 1921.

Reply to answer, March 18, 1921. [2]

### **PROCEEDINGS UNDER PROCESS.**

The vessel was not arrested on monition or at-  
tachment. The Pacific Steamship Company, the  
owner of the vessel filed a general bond in this  
court on March 27, 1917, with the National Surety



Company as surety, in the sum of \$25,000.00, conditioned to answer the decree of the Court in all or any cases which should thereafter be brought in this court against said vessel "Admiral Goodrich" and certain other vessels therein named, as provided in Admiralty Rule No. 32 of this court.

On September 2, 1920, as provided by Admiralty Rule No. 33 of this court, the Clerk issued a notice of the commencement of this suit, to the Pacific Steamship Company and the National Surety Company, the principal and surety in said bond, giving the names of all libellants and the names and addresses of their proctors and the amount sued for, which notice was served by the U. S. Marshal upon said Pacific Steamship Company and said National Surety Company and his return of same made on said notice.

### TRIAL.

On January 13, 1922, this cause was tried before Hon. Jeremiah Neterer, District Judge.

### REFERENCE TO COMMISSIONER.

No question was referred to a Commissioner or Commissioners.

### DECREE.

Final decree, finding for claimant, entered and filed, January 30, 1922.

### NOTICE OF APPEAL.

Notice of appeal filed February 1, 1922. [3]

In the District Court of the United States in and  
for the Western District of Washington,  
Northern Division.

No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-  
ration,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH" Her Tackle,  
Apparel and Furniture,

Respondent.

**Libel.**

To the Honorable JEREMIAH NETERER, Judge  
of the Above Court:

COMES NOW the Shell Company of California,  
and brings its libel against the steamship "Admiral  
Goodrich," now lying within the district aforesaid,  
her tackle, apparel and furniture, in a cause of con-  
tract civil and maritime and alleges as follows, to  
wit:

I.

That at all the times herein mentioned, the Shell  
Company of California was and is a corporation  
organized and existing under and by virtue of the  
laws of the State of California, and authorized to  
and doing business within the State of Washington,  
and having paid its license fees for the current  
year.

## II.

That at all the times herein mentioned, the steamship "Admiral Goodrich" was an American vessel and was owned by the Pacific Steamship Company, and that on the 23d day of July, 1919, the Pacific Steamship Company entered into a charter-party with the Gulf Mail Steamship Company for said vessel, a copy of which charter is hereto annexed, marked Exhibit "A," and made a part hereof. [4]

## III.

That on the 14th of August, 1919, that while said vessel was lying in the port of San Francisco and being in need of fuel oil, at the request of the charterer of said vessel the above-named libelant delivered to said vessel fuel oil as follows:

388.19 Bbls. fuel oil .....	\$ 628.87
412.08   "   "   " .....	667.57
568.83   "   "   " .....	950.66
Barge Charge .....	20.00

---

Total ..... \$2267.10

## IV.

That no part of the amount due for said fuel oil, namely Two *Thousand Sixty-seven* and 10/100 (\$2267.10) Dollars, has been paid although demand has been made for said sum and such demand has been refused.

## V.

That the said libelant did not know nor by the

exercise of reasonable diligence could it have been ascertained that the terms of the charter-party aforesaid provided for the payment of fuel oil by the above-named charterer.

· VI.

That on or about the 1st of September, 1919, and while said fuel oil was on board of the said vessel, the said Pacific Steamship Company, the owner of said vessel, as provided by the terms of the charter, took possession of said vessel with said fuel oil on board and collected any and all sums of money due or owing on account of the then voyage of said vessel.

WHEREFORE the libelant prays that process in due form of law, according to the *court* of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel and furniture, and that all persons [5] having or pretending to have any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the said amount due with costs, and interest from August 14, 1919, at the rate of 6 per cent per annum, and that said vessel may be condemned and sold to pay the same, and that the libelant may have such other and further relief as in law and justice he may be entitled to receive.

TUCKER & HYLAND,  
Proctors for Libelant.

The United States of America,  
Western District of Washington,—ss.

Don G. Fisher, being first duly sworn, on oath deposes and says: That he is the Northwestern manager of Shell Company of California; that he has read the foregoing action, knows the contents thereof and believes the same to be true.

DON G. FISHER.

Subscribed and sworn to before me this 1st day of September, 1920.

[Notary Seal] IVAN L. HYLAND.

Notary Public in and for the State of Washington,  
Residing at Seattle. [6]

**Exhibit "A."**

**CHARTER PARTY.**

**TIME CHARTER, GOVERNMENT FORM.**

C. BEYFUSS CO.,  
Ship & Freight Brokers,  
San Francisco, Cal.

San Francisco, July 23, 1919.

IT IS THIS DAY MUTUALLY AGREED between PACIFIC STEAMSHIP COMPANY, agents for Owners of the Steamship or Vessel called the American steamship "ADMIRAL GOODRICH," of 1419 Tons Gross Register, and 836 Tons net Register, and a total deadweight capacity of about 2264 long tons including fuel tanks of about 3058 bbls. capacity, and reported to have a speed aver-

age 10 knots an hour on a consumption of about 100 bbls. of oil per 24 hours; deadweight cargo capacity about 1623 tons (2240 lbs.); cubic cargo capacity under deck about 1150 tons, and GULF MAIL STEAMSHIP COMPANY, charterers.

1. That the said owners agrees to let, and the said Charterers agree to hire the said Steam-Period ship for the term of three (3) calendar Months certain. The hire to commence from the day on which she is delivered or placed at the disposal of the Charterers at San Delivery Francisco in such dock or such safe Wharf or place (where she may always safely lie afloat) as Charterers may direct, she being then ready with clear holds, tight, staunch, strong, and every way fitted for the service (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage); Employ- to be employed in such lawful trades as ment Charterers or their Agents shall direct in Coastwise Trading of North and South America (Pacific Ocean) not north of Vancouver and not south of Peru, on the following conditions:

2. That the owners shall provide and pay for all Provisions, Wages, and Consular Fees Obliga- of the Captain, Officers, Engineers, Fire- tion men and crew; shall pay for the Insurance of the Vessel; also for all Deck, Galley and Engine Room store, including water for boilers, [7] bunker coal or fuel oil excepted, and main-



tain her in a thoroughly efficient state in Hull and Machinery for the service.

3. That the Charteres shall provide and pay for all Bunker Coals or Fuel Oil, Port, Light and Dock Charges, Pilotages, Agencies, Commissions, Labourage, Suez and other Canal Dues, when incurred, also all charges appertaining to the cargoes they may put on board.

4. That the Charterers shall accept and pay for all Coal or Oil in Ship's Bunkers upon commencement of hire; and the Owners shall on expiry of this Charter-Party, pay for all Coal or Oil then left in the Bunkers, at current market prices of the Port where the hire begins and ends.

5. That the Charteres shall pay for the use and hire of said Vessel at and after the rate of Rate a lump sum of Twenty-one Thousand Five of hire Hundred and Eight (\$21,508.00) Dollars per calendar month, payments to be made in Cash in advance monthly, commencing on the day of delivery as aforesaid; hire to continue from the time specified for terminating the Charter until her redelivery to Owners (unless lost) at San Francisco or Puget Sound, Charterers' option and to be payable in San Francisco.

5A. Charterers are to provide necessary dunnage and shifting boards, but Owners to allow them the use of the dunnage and shifting boards already aboard Steamer. Charterers to have the privi-

ledge of using shifting boards for dunnage, they making good for any damage thereto.

5B. Charterers agree to keep vessel free from liens and redeliver her free from liens.

6. Should the vessel be on a voyage occupying more time than herein stipulated, the rate Part of hire for such additional period to be of in the same proportion as above, and if re-month deliverd with Owner's consent before the expiration of the time stipulated, a corresponding rebate of hire to be allowed. [8]

7. In default of punctual and regular payment or payments as herein specified, the Owners shall have the faculty of withdrawing the vessel from the service of the Charterers, without prejudice to any claim they, the Owners, may otherwise have on the Charterers, in pursuance of this charter.

8. That the Cargo or Cargoes shall be laden and/or discharged in any dock, at any wharf or place that Charterers may direct where the vessel can always safely lie afloat.

9. That the whole reach, burthen of the ship (not being more than she can reasonable Cargo stow and carry), shall be at the Charterers space disposal, reserving only proper and sufficient space for Ship's Officers, Crew, Tackle, Apparel, Furniture, Provisions and Stores. Ballast Tanks to be at the disposal of Charterers for conveyance of fresh water. Charterers to have



the privilege of loading any usual deck cargo to be carried at Charterer's and/or Shippers' risk.

10. That the Captain shall prosecute his voyages with the utmost dispatch, and shall render all customary assistance with any cranes and/or winches the Steamer has, also with her crew and boats (and likewise work the condenser when required, and when in port to work from 8 A. M. to 5 P. M., or during such hours as Charterers or their Agents may require, Charterers paying usual overtime.

11. That the Captain (although appointed by the Owners) shall be under the orders and direction of the Charterers as regards employment, agency or other arrangements; and shall sign Bills of Lading as presented, and at any rate of freight the Charterers or their Agents may choose, without prejudice to this Charter-Party; and the Charterers hereby agree to indemnify the Owners from any consequences and liabilities that may arise from the Captain signing such Bills of Lading, or in his otherwise following the Charterer's instructions; the Stevedores shall be employed and paid by the [9] Charterers, but

12. Owners to provide all ropes, falls, blocks and slings necessary for handling ordinary cargoes up to three tons weight, also sufficient lanterns for night work. Should ship or cargo be damaged through insufficiency or inefficiency of the Steamer's tackle, the loss or damage so occasioned to be assured or paid for by Super-cargo

Owners. Charterers to supply mooring lines, if required, at South American Ports.

13. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain Captain, Officers, or Engineers, the and Owners shall, on receiving particulars Officers of the complaint, investigate the same, and if necessary, make a change in the appointments.

14. Vessel drydocked and painted March, 1919.

15. That the Master shall be furnished from time to time with all requisite instructions and sailing directions, and shall keep a full and correct log of the voyage or voyages, which are to be patent to Charterers or their Agents.

16. Average, if any, to be settled according to York-Antwerp Rules, 1890.

17. That in the event of the loss of time from deficiency of men or stores, breakdown of machinery, stranding, fire or damage preventing Loss the working of the vessel, for more than of twenty-four hours, the payment of the hire Time shall cease until she be again in an efficient state of resume her service at such place or position where the payment of hire ceased, and should the vessel in consequence of any of the matters aforesaid put into any port, other than that to place or position where the payment of hire ceased,

and should the Vessel in consequence of any of the matters aforesaid put into any port, other than that of which she is bound, the Port Charges, Pilotages, and other expenses at such port shall be borne by the Steamer's Owners [10] but should the vessel be driven into port, or to anchorage by stress of weather, or from any accident to the cargo, such detention or loss of time shall be at the Charterer's risk and expense.

18. That should the vessel be lost, damage to cargo or any damage to the steamer caused Loss by the cargo, the hire is to cease and determine on the day of her loss, and if missing from the date when last heard of, and any hire paid in advance and not earned shall be returned to Charterers.

19. The ship has liberty to call at any ports in any order, to sail with or without pilots, and to tow and assist in vessels in distress and to deviate for the purpose of saving life or property. Steamer not to tow except as per Clause 19.

20. The Act of God, perils of the sea, fire, bar-ratry of the Master and crew, enemies, Exceptions pirates and thieves, arrests and re-straints of princes, rulers and people, collisions, stranding and other accidents of navigation excepted, even when occasioned by negligence, default or error, in judgment of the Pilot, Master, Mariners, or other Servants of the Shipowners.

21. Ship not answerable for *loses* through ex-

plosion, bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull, not resulting from want of due diligence by the Owners of the Ship, or any of them, or by the Ship's Husband or Manager.

22. That should any dispute arise between the Owners and Charterers as to the meaning and intention of this Charter-Party, or as to any act or thing to be done thereunder, the matter in dispute shall be referred to three Commercial persons in San Francisco, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any two of them, shall be final, and for the purpose of endorsing any award this agreement may be made a rule of Court. [11]

23. That the Owners shall have a lien upon all cargoes and sub-freights for arrears of hire, port charges, or any disbursements, fuel, etc., unpaid and Charterers to have a lien on the ship for all moneys paid in advance and not earned, after deducting Owners' and Charterer's expenses and Crews' proportion.

24. That all salvages and derelicts shall be for Owners' and Charterers' equal benefit.

25. In the event of war being declared during the currency of this Charter, by or against the nation to which the Steamer belongs Charterers to have option of cancelling this Charter, and also the option of cancelling if Steamer is not

delivered as above in seaworthy condition on or before August 18, 1919, but hire not to commence before the 7th of August, 1919, if required by Charterers.

27. Two and one-half per cent Commission commission is due on account of Hire under this Charter, and also upon the continuation or extension thereof, Vessel lost or not lost, and is payable by Owners of C. Beyfuss Co.

28. Charterers to have the liberty to sublet the Steamer upon written consent of Owners for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter-Party.

28-A. Time lost for any delay of quarantine for Charterers' account, except if caused by officers and/or crew, such loss of time to be for Owners' account.

If the owner of the ship shall have exercised due diligence to make said ship in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master or crew, in the navigation or management of the ship, or from latent or other defects, or unseaworthiness [12] of the ship, whether existing at the time of shipment or at beginning of the voyage, but not discoverable by due diligence, the consignee or owners of the cargo shall not be exempted from liability for contribution in General Average or for any special charges incurred, but with the



shipowners shall contribute in General Average, and shall pay such special charges, as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defect or unseaworthiness.

28-B. No cargo to be loaded at a United States Pacific or British Columbia port for delivery at a United States Pacific or British Columbia port.

29. Penalty for non-performance of this Contract estimated amount of damages.

M. F. CROPLEY,

Witness to the signature of

PACIFIC STEAMSHIP CO.

F. M. BARRY,

O. C.,

Assistant General Manager.

R. G. SULLIVAN,

Witness to the signature of

GULF MAIL STEAMSHIP CO.

PAUL HARTMAN,

Pres.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sept. 2, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [13]

In the District Court of the United States, in and for the Western District of Washington, Northern Division.

**Bond to Marshal.**

KNOW ALL MEN BY THESE PRESENTS: That we, Pacific Steamship Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Maine, as principal, and National Surety Company, a corporation organized under the laws of the State of New York, as surety, are held and firmly bound unto John M. Boyle, Marshal of the United States for the Western District of Washington, and to whomsoever shall succeed him as Marshal of the United States for the said district, in the sum of twenty-five thousand (\$25,000) dollars, to be paid to said marshal, for the payment of which, well and truly to be made, we bind ourselves and our and each of our successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated this 22d day of March, 1917.

WHEREAS, the steamships "Admiral Wainwright," "Admiral Dewey," "Admiral Evans," "Admiral Watson," "Admiral Farragut," "Admiral Goodrich," "Admiral Schley," "Northland," "Aurelia," "City of Seattle," "Ravalli," "City of Topeka," "Curacao," "Governor," "Harvard," "Homer," "President," "Queen," "Senator," "Spo-

kane," "Umatilla," "Yale," and "Congress," and each and all of said vessels are now within or may hereafter come within or be found within the jurisdiction of the above-entitled court, and each of said vessels is time chartered to Pacific Steamship Company, as time-chartered owner thereof; and,

WHEREAS, the said vessels are, and each of them is, liable at any time to be libeled in the above-entitled court and arrested on process issued out of said court in the usual course of admiralty; [14] and,

WHEREAS, the said principal desired to avail itself of the provisions of Section 941 of the Revised Statutes of the United States as amended by the Act of March 3, 1899, and, in the manner therein provided, to stay the execution of all process against said vessels, and each of them, on account of any and all suits or proceedings in admiralty which may hereafter be brought in the above-entitled court against the above-named vessels, or any of them, and to prevent the vessels, or any of them, from being arrested on process issuing out of said Court.

NOW, THEREFORE, the conditions of this obligation are such that, if the said principal, Pacific Steamship Company, a corporation, shall satisfy the final decree of the above-entitled court, rendered and entered against it or against any or all of the above-named vessels in each and every proceeding that shall hereafter be commenced in said Court against any and all of the above-named



vessels, then this obligation shall be void; otherwise, to remain in full force and virtue.

IN WITNESS WHEREOF, the Pacific Steamship Company has caused its corporate name to be hereunto signed by its vice-president and its corporate seal to be hereunto affixed by its secretary, and the said National Surety Company has caused its corporate name to be signed hereto by its Resident vice-president and its corporate seal to be hereunto duly affixed by its resident assistant secretary, the day and year first above written.

PACIFIC STEAMSHIP COMPANY,

By E. C. WARD,

Its Vice-President.

[Corporate Seal] Attest: E. B. ROGERS,

Sec'y,

Its Secretary,

Principal.

NATIONAL SURETY COMPANY,

By L. H. WOOLFOLK,

Resident Vice-President,

[Corporate Seal] Attest: E. P. WELCH,

Resident Assistant Secretary. [15]

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. March 27, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [16]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-  
ration,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

**Claim by Owner.**

And now before the Honorable Court comes Pa-  
cific Steamship Company, a corporation of Port-  
land, Maine, owner of the steamship "Admiral  
Goodrich," her engines, tackle, apparel and furni-  
ture, and claims the above-named ship "Admiral  
Goodrich," her engines, tackle, apparel and furni-  
ture, and appears to defend this suit accordingly.

GROSSCUP & MORROW,

Proctors for Claimant.

Office and Postoffice Address: 3201-3 L. C. Smith

Building, Seattle, King County, Wash. [17]

Western District of Washington,

State of Washington,

County of King,—ss.

A. F. Haines, being duly sworn, says: That he  
is the vice-president of the Pacific Steamship Com-

pany, a corporation; that Pacific Steamship Company is the owner of the steamship "Admiral Goodrich," her engines, tackle, apparel and furniture, against which this suit has been commenced by Shell Company of California, a corporation, libelant; that he is duly authorized to make this verification for and in behalf of said Pacific Steamship Company; and deponent further says that at the time of the commencement of this suit said steamship "Admiral Goodrich," her engines, tackle, apparel, etc., was in possession of claimant, as owner.

A. F. HAINES.

Subscribed and sworn to before me this 8th day of September, 1920.

[Notary Seal]

W. A. JOHNSON,

Notary Public in and for the State of Washington,  
Residing at Seattle.

Due service of the within and foregoing claim by owner by the receipt of a true copy thereof, hereby is admitted in behalf of all parties entitled to such service by law or by rules of court this 8th day of Sept., 1920.

TUCKER & HYLAND,

Proctors for Libelant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sept. 8, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [18]

In the District Court of the United States in and  
for the Western District of Washington,  
Northern Division.

No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-  
ration,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

**Amended Libel.**

To the Honorable JEREMIAH NETERER, Judge  
of the Above Court.

COMES NOW the Shell Company of California  
and brings its amended libel against the steamship  
"Admiral Goodrich," now lying within the dis-  
trict aforesaid, her tackle, apparel and furniture,  
in a cause of contract civil and maritime and alleges  
as follows, to wit:

**I.**

That at all the time herein mentioned, the Shell  
Company of California was and is a corporation  
organized and existing under and by virtue of the  
laws of the State of California, and authorized to  
and doing business within the State of Washington,  
and having paid its license fee for the current year.

II.

That at all the times herein mentioned, the steamship "Admiral Goodrich" was an American vessel and was owned by the Pacific Steamship Company, and that on the 23d day of July, 1919, the Pacific Steamship Company entered into a charter party with the Gulf Mail Steamship Company for said vessel, a copy of which charter is annexed to the original libel, and that on the 14th [19] day of August, 1919, the above-named libelant did not know who the owner of the said vessel was, and did not know of the said charter nor of what was contained therein.

III.

That on the 14th day of August, 1919, while said vessel was lying in the port of San Francisco and being in need of fuel oil at the request of the charterer of said vessel the above-named libelant delivered to said vessel fuel oil as follows:

388.19	Bbls. fuel oil	.....	\$ 628.87
412.08	" " "	.....	667.57
586.83	" " "	.....	950.66
	Barge charge	.....	20.00
			<hr/>
			\$2267.10

IV.

That no part of the amount due for said fuel oil, namely, Two Thousand Sixty-seven and no/100 (\$2267.10) Dollars, has been paid, although demand

had been made for said sum and such demand has been refused.

V.

That on or about the first of September, 1919, and while said fuel oil was on board of said vessel, the said Pacific Steamship Company, the owner of said vessel, as provided by the terms of the charter, took possession of said vessel with said fuel oil on board and collected any and all sums of money due or owing on account of the then voyage of said vessel.

WHEREFORE, the libelant prays that process in due form of law, according to the rules of this Honorable Court in case of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle apparel and furniture, and that all persons having or pretending to have any right, title or interest therein may be cited to appear and answer all and singular the matter aforesaid and that this Honorable Court would be pleased to decree the payment of the said amount due with costs and [20] interest from August 14, 1919, at the rate of 6 per cent per annum, and that said vessel may be condemned and sold to pay the same, and that the libelant may have such other and further relief as in law and justice it may be entitled to receive.

TUCKER & HYLAND,

Proctors for Libelant.

The United States of America,  
Western District of Washington,—ss.

Donnell G. Fisher, being first duly sworn, on oath



deposes and says: That he is the division manager of the Shell Company of California; that he has read the foregoing libel, knows the contents thereof and believes the same to be true.

DONNELL G. FISHER,

Subscribed and sworn to before me this 17th day of January, 1921.

[Notary Seal]

IVAN L. HYLAND,

Notary Public in and for the State of Washington,  
Residing at Seattle.

Service of within amended libel this 19th day of Jan., 1921, and receipt of copy thereof, admitted.

GROSSCUP & MORROW,

Attorneys for Respondent.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Jan. 20, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [21]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-  
ration.

Libelant,

vs.

Steamship "ADMIRAL GOODRICH." Her Tackle,  
Apparel and Furniture.

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corpora-  
tion.

Claimant.

**Answer to Amended Libel.**

To the Honorable JEREMIAH NETERER, Judge  
of the District Court of the United States for  
the Western District of Washington, Northern  
Division:

The answer of Pacific Steamship Company,  
claimant, to the amended libel of Shell Company of  
California, a corporation, against the steamship  
"Admiral Goodrich," her engines, tackle, apparel,  
etc., alleges as follows:

I.

Claimant admits Article I of said amended libel.

II.

Claimant admits Article II of said amended libel,



except it denies that libelant did not know who the owner of said vessel was, and denies libelant did not know about the said charter or what was contained therein. [22]

III.

Answering Article III claimant avers it has no knowledge or information sufficient to form a belief as to the allegations therein contained, and, therefore, neither admits nor denies, but leaves the same to be proven by the libelant as it may be able so to do.

IV.

Answering Article IV of said amended libel, claimant denies that the sum of \$2267.10, or any other sum whatsoever, is due to libelant.

V.

Answering Article V of said amended libel, claimant denies each and every item, allegation and particular therein contained, except claimant admits it took possession of said vessel on or about September 1st, 1919.

FURTHER ANSWERING SAID AMENDED LIBEL, AND BY WAY OF AFFIRMATIVE DEFENSE THERETO, claimant alleges as follows:

I.

That the libelant, the claimant, and the Gulf Mail Steamship Company, charterer of the steamship "Admiral Goodrich," were all residents of the State of California, having principal offices for the transportation of business at San Francisco, in

said state; that San Francisco was the port of supply of said steamship; that the name of the vessel, her home port and the house flag of claimant were plainly marked upon said steamship; that by reason of numerous previous recent dealings in connection with supplying the same vessel, the libelant knew that the claimant, and not the Gulf Mail Steamship Company, was the owner of [23] said steamship; that any inquiry, however slight, would have disclosed to libelant the terms of said charter-party, by reason of which the Gulf Mail Steamship Company was required to provide and pay for all fuel oil, and was required to keep said vessel free from liens and redeliver her free from liens, and that, therefore, the said Gulf Mail Steamship Company in ordering said fuel oil was without authority to bind the vessel therefor; that the libelant failed to exercise the diligence required of it by law in not ascertaining that, because of the terms of said charter-party, the Gulf Mail Steamship Company was without authority to bind the vessel for said fuel oil.

WHEREFORE, having fully answered said amended libel, claimant prays that same may be dismissed, with its costs herein to be taxed against the libelant, and for such other and further relief as to the Court may seem just.

GROSSCUP & MORROW,  
Proctors for Respondent and Claimant. [24]

Western District of Washington,  
State of Washington,  
County of King,—ss.

H. C. Cantelow, first being duly sworn, on oath deposes and says: That he is the assistant general manager of Pacific Steamship Company, a corporation, claimant; that he makes this verification for and in behalf of said Pacific Steamship Company, being duly authorized so to do; that he has read the within and foregoing answer, knows the contents thereof, and the facts therein stated are true as he verily believes.

H. C. CANTELOW.

Subscribed and sworn to before me this 12th day of March, 1921.

[Notorial Seal]

W. A. JOHNSON,

Notary Public in and for the State of Washington,  
Residing at Seattle.

Due service of the within and foregoing answer to amended libel by the receipt of a true copy thereof, together with true copies of the exhibits recited therein as being attached thereto, hereby is admitted in behalf of all parties entitled to such service by law or by rules of court, this 14th day of March, 1921.

TUCKER & HYLAND.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division, Mar. 14, 1921. F. M. Harshberger, Clerk.  
By S. E. Leitch, Deputy. [25]

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-  
ration,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corpora-  
tion,

Claimant.

**Reply.**

The Shell Company of California for reply to the  
Answer of the respondent herein states:

**I.**

That as touching the allegations contained in  
paragraph I of the Affirmative Defense thereto,  
denies the same and each and every part thereof.

WHEREFORE the libelant demands judgment

as heretofore demanded in the amended libel on file herein.

TUCKER & HYLAND,  
Proctors for Libelant. [26]

Western District of Washington,  
State of Washington,  
County of King,—ss.

Don G. Fisher, being first duly sworn, on oath deposes and says: That he is the division manager of the Shell Company of California, a corporation, libelant; that he makes this verification for and on behalf of said Shell Company of California, being duly authorized so to do; that he has read the within and foregoing reply, knows the contents thereof and believes the same to be true.

DON G. FISHER.

Subscribed and sworn to before me this 16th day of March, 1921.

IVAN L. HYLAND,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Service of within reply this 18th day of March, 1921, and receipt of a copy thereof, admitted.

GROSSCUP & MORROW,  
Attorneys for Respondent.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Mar. 19, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [27]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-  
ration,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corpora-  
tion,

Claimant.

**Stipulation for Taking Depositions.**

IT IS HEREBY STIPULATED by and between  
the proctors for the respective parties hereto that  
the depositions of any witness or witnesses pro-  
duced by either party hereto, may be taken upon  
oral interrogatories, in accordance with Sec. 866 of  
the Revised Statutes of the United States, before  
Frank L. Owen, 502 California Street, San Fran-  
cisco, California, a notary public for the State of  
California, who is not of counsel for either party  
hereto, nor interested in the event hereof, on the  
12th day of May, 1921, at the hour of 2:00 o'clock  
P. M. on that day, and that the hearing hereunder



may be adjourned from day to day thereafter until completed, and an order may be entered by either party hereto to that effect without notice.

Dated at Seattle, Washington, this 3d day of May, 1921.

TUCKER & HYLAND,

Proctors for Libelant.

GROSSCUP & MORROW,

Proctors for Respondent and Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Jan. 13, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [28]

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In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corporation,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle, Apparel and Furniture,

Respondent.

**Testimony.**

BE IT REMEMBERED, that this cause came on regularly for trial on this, the 13th day of January, 1922, before the Hon. Jeremiah Neterer, Judge of the above-entitled court; the libelant appearing by Messrs. Tucker & Hyland, its proctors; and the respondent by Messrs. Grosscup & Morrow and — Johnson, Esq., its proctors; whereupon the following testimony was offered and proceedings had, to wit: [29]

Mr. HYLAND.—I desire, at this time, if your Honor please, to read in evidence the deposition of Cornelius F. Buckley, taken on behalf of the libelant.

The COURT.—Proceed.

(Deposition of Cornelius F. Buckley read.)

Mr. HYLAND.—That is our case, of your Honor please.

**RESPONDENT'S CASE.**

Mr. JOHNSON.—There is one deposition that was taken in San Francisco on behalf of the respondent, of Lawrence O'Connell, which I desire to read in evidence.

(Deposition of Lawrence O'Connell, read.)



**Testimony of Frank Woolsey, for Respondent.**

FRANK WOOLSEY, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. JOHNSON.)

Q. State your name, please.

A. Frank Woolsey.

Q. Mr. Woolsey, will you please state to the Court what your occupation is?

A. I am secretary of the Pacific Steamship Company.

Q. And as such secretary is it your duty to have charge of the official records of that company?

A. It is.

Q. Now, I will show you this document here, which we will—

A. That is the one I gave you this morning?  
[30]

Q. Yes.

Mr. JOHNSON.—Before I go into this I will ask the Court, also Mr. Hyland, if there is any objection to our withdrawing these documents; they are originals?

Mr. HYLAND.—None at all.

Mr. JOHNSON.—We would like to put them in and substitute copies.

Mr. HYLAND.—Submit a copy now, if you want to.

(Testimony of Frank Woolsey.)

Mr. JOHNSON.—I haven't one with me.

Q. Showing you Respondent's Exhibit No. 17, will you please tell the Court what that is?

A. That is a copy of the bill of sale on the enrolled vessel.

Q. What vessel?

A. The "Admiral Goodrich."

Q. Running from whom to whom?

A. From the Arrow Line Steamship Company to the Pacific Alaska Navigation Company.

Q. What is the date of that?

A. The date is the 28th of February, 1916.

Q. February 28, 1916. This is the original bill filed in the Custom-house? A. Yes.

Q. Showing you Respondent's Exhibit No. 18, will you please tell the Court what that is?

A. That is a copy of a bill from the Pacific Alaska Navigation Company to the Pacific Steamship Company, a corporation, dated the 24th of October, 1918.

Q. 24th of October 1918. That also was the original that was filed in the Custom-house?

A. Yes, sir.

Q. I will show you Respondent's Exhibit No. 19.  
[31]

A. That is a copy of the temporary register—temporary register No. 66.

Q. What vessel does that register cover?

A. The register of what was formerly the steam-

(Testimony of Frank Woolsey.)

ship "Arrow Line," now the "Admiral Goodrich," dated September 2, 1916.

Q. Now, Mr. Woolsey, what is the connection between the Pacific Alaska Navigation Company and the Pacific Steamship Company?

A. Well, the Pacific Alaska Navigation Company was the holding company of the steamship company—of the operating company.

Q. In what respect is it the holding company with regard to the stock?

A. Well, it is—I don't understand your question.

Q. Does it own the stock of the company, or is it the stock of the Pacific Steamship Company that—

A. No, it owns the stock of the company.

Q. Now, Mr. Woolsey, you have been in the shipping business on this coast for how long?

A. I started in San Francisco in 1875 or '76.

Q. Do you know about when the Pacific Alaska Navigation Company adopted the trade name of Admiral Line?

A. I could not say exactly, it must be ten or twelve years ago.

Q. Some considerable length of time, is it not?

A. Yes, sir.

Q. And I think you testified the Pacific Steamship Company is a subsidiary of the Pacific Alaska Navigation Company?      A. Yes.

Q. And does the subsidiary now use the trade name of the parent company?      A. Yes.

(Testimony of Frank Woolsey.)

Q. Outside of the "Admiral Wainwright" which was temporarily [32] operated by the Dollar company under that name, do you know of any other vessels named the "Admiral so-and-so" which are owned by any other company than the Pacific Alaska Navigation Company, or the Pacific Steamship Company?

A. No, not on this coast; they are all part of the Admiral Line through the Pacific Steamship Company's holdings; have been about thirteen of them altogether—twelve or thirteen.

Q. Twelve or thirteen Admirals. When you say "not on this coast" I presume you refer to the old United Fruit Company's steamers?

A. Yes, sir, old United Fruit Company's steamers.

Q. Where did those ships go to—what became of them?

A. They were sold to the Pacific Alaska Navigation Company.

Q. Some ten or twelve years ago? A. Yes.

Q. There are no vessels now, or have not been for a number of years that have been run by any company under the name of "Admiral so-and-so"?

A. Not that I know of.

Cross-examination.

(By Mr. HYLAND.)

Q. The Pacific Steamship Company is it, or is it not, now the owner, according to this bill of sale—

(Testimony of Frank Woolsey.)

the Pacific Alaska Navigation Company is the owner of this vessel?

A. No, the Pacific Alaska Navigation Company deeded it to the Pacific Steamship Company.

Mr. JOHNSON.—There is one more question, if you will permit me.

A. (By Mr. JOHNSON.) Since the purchase of the “Admiral Goodrich” by the Pacific Alaska Navigation Company and the Pacific Steamship Company later, up to the present time who has [33] owned that ship?

A. The Pacific Steamship Company.

Q. (By Mr. HYLAND.) You say that they adopted the name about ten or twelve years ago?

A. As I remember it.

Q. Who first used it?

A. The Admiral Line was the name given—I don’t know—it was called the Admiral line or the White Steamers; they had four “Admirals,” which were purchased by this company.

Q. Were you with the company at that time?

A. Not at that time, no.

Q. How long have you been with the company?

A. Well, officially since about a year ago.

Q. With what company were you prior to that time?

A. Well, I was not with any steamship organization at all.

(Testimony of Frank Woolsey.)

Q. You were in the shipping business in San Francisco?

A. No, I had been in Portland; and I think I had been in Tacoma at different times in connection with Dodwell & Company.

Q. You were in their employ, or connected with them in some way?

A. With the steamship company?

Q. Yes?

A. No, not officially.

Q. Just as a matter of recollection, do you know how long they have used the "Admiral" name?

A. Well, I have been familiar with the name a good many years.

Q. But was it used prior to the formation of the Pacific Steamship Company?

A. How is that? [34]

Q. Who used the name of Admiral Line prior to the formation of the Pacific Steamship Company?

A. The Pacific Alaska Navigation Company, I suppose.

Q. The Pacific Alaska Navigation Company, you suppose? A. Yes, sir.

Q. What vessels did they operate under that name, do you know?

A. Well, they operated the entire fleet which had been in operation, and had been for a number of years; the name was used by all of the vessels in the organization.

Q. I don't want to be captious, or I do not wish



(Testimony of Frank Woolsey.)

to show too much of my ignorance about it, but who formed the original Pacific Alaska Navigation Company, was that Mr. Alexander?

A. His company, yes, sir.

Q. Formed for operation of vessels to Alaska, was it not?

A. Well, I suppose originally that was the—coastwise and Alaska.

Q. There was at that time the Pacific Coast Company operating San Francisco boats out of here?

A. I don't understand your question. The Pacific Coast Company you referred to—

Q. The Pacific Coast Company was operating boats out of here, and the Pacific Alaska Navigation Company bought the Pacific Coast Company's boats?

A. The Pacific Alaska Navigation Company.

Q. You can't say when Mr. Alexander did take over the Admiral Line?

A. I could not say without referring to the files.

Q. But, as I understand it, in 1916 the Pacific Steamship Company went into business?

A. That is right, I think. [35]

Q. Prior to that time they had been operating under the name of the Pacific Alaska Steamship Company?

A. Alaska Pacific, and Pacific Alaska Navigation Company.

Q. Pacific Alaska Navigation Company. That is all.

(Witness excused.)

Respondent rests.

Testimony closed.

(ARGUMENT.)

The COURT.—I will take the matter under advisement.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 2, 1922. F. M. Harshberger, Clerk, By S. E. Leitch, Deputy. [36]

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corporation,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her  
Tackle, Apparel and Furniture,  
Respondent.

**Decision.**

Filed January 19, 1922.

TUCKER & HYLAND, Proctors for Libelant.

GROSSCUP & MORROW, Proctors for Claimant,  
Pacific Steamship Company.

NETERER, District Judge.

The libelant seeks to recover compensation for fuel oil furnished August 14, 1919, to the Gulf Mail Steamship Co., charterer of the steamship "Admiral Goodrich." The steamship "Admiral Goodrich" at the time being owned by the Pacific S. S. Co. The Gulf Mail S. S. Co., charterer, libelant, and claimant *all* at the time had principal offices at San Francisco. By the terms of the charter-party the charterer was required to keep the S. S. free from liens. The claimant denies liability and alleges that the libelant failed to exercise the required diligence, to ascertain the authority of the charterer to bind the steamship. Mr. Buckley, Assistant Manager of the Fuel Oil department of the libelant, testifies that Mr. Hartman, the president of the Charterer, by telephone called him up and

"told me they wanted oil for the 'Admiral Goodrich'; that they were in a hurry for it."

He further stated:

"The Gulf Mail S. S. Co., was acting as manager of the steamer, and charged it to the steamer and owner. Q. What inquiry did you make as to ownership? A. I didn't make any.

Q. Why didn't you make any? A. I never had been able to find out who the owners of the steamer were, they changed around so much.

Q. What steamers do you mean? A. Well, take these steamers on the Admiral Line and Pacific S. S. Co., the Alaska S. S. Co., the Pacific-Alaska S. S. Co., they were shifting their ships around so you could not keep track of who the owners were; in fact, one time I remember a case where I tried to find out who the owners were, and they were 'huffy' about it, and thought I was trying to get hold of the controlling stock, so I gave it up as bad business; we never could get any business if we followed those tactics."

On cross-examination it was shown that [37] the Pacific S. S. Co. purchased fuel oil for the "Admiral Goodrich" nine times within ten months, the last purchase being June 20, 1919; the dates of purchase being as follows: Oct. 28, Nov. 21, Dec. 6, 12, 20, 20, 27, 1918. Feb. 3, March 31, May 16, June 20, 1919. Letters of the libelant are presented with relation to each delivery and reference is made to *purchase of fuel oil for the "Admiral Goodrich."* In all these letters it is stated that advices had been given that the "Admiral Goodrich" would take delivery of oil, or that fuel oil had been delivered to "Admiral Goodrich." The Pacific Alaska S. S. Co., is a holding company for the Pacific S. S. Co., under date of October 24, 1918 the S. S. "Admiral Goodrich" was formally transferred to the claimant. Libelant relies on the South

Coast, 251 U. S. 519; *The Dumois*, 68 Fed. 926; *The St. John's*, 273 Fed. 1005; *The Angy B. Watson*, 274 Fed. 219.

The relation between libelant and claimant on furnishing oil to the "*Admiral Goodrich*" and its disclosed knowledge of the confusion of the steamers on the *Admiral* line to which the charterer was not a party or in any way identified, is conclusive that the libelant must be charged with such knowledge of ownership as required reasonable diligence to ascertain the terms of the charter-party; and such diligence would have disclosed that the terms of the charter-party prohibited the charterer from binding the vessel. Sec. 7785, C. S.; 36 Stat. 605. *The South Coast*, *supra*, is distinguished from the instant case, because in that case, the charter-party permitted a lien, whereas, in the instant case the charter-party prohibits a lien. *The Dumois*, *supra*, was decided May 1895, whereas, the act in issue was enacted June 23, 1910. *The St. John's*, *supra*, [38] is distinguished in that libelant knew nothing about the ship, except, that it was in possession of those who ordered the supplies, whereas, in the instant case, libelant knew there was "*confusion*," about the ownership of the "*Admiral*" steamers with companies other than the charterer, and had furnished fuel for the "*Admiral Goodrich*" to the claimant for eight months previous. *The Angy B. Watson*, *supra*, has no bearing on the facts here. Decree for claimant.

JEREMIAH NETERER,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 19, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [39]

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Cor-  
poration,

Libellant,

vs.

Steamship “ADMIRAL GOODRICH,” Her  
Tackle, Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corpora-  
tion,

Claimant.

**Decree.**

The above-entitled cause coming on regularly to be heard before the Honorable Jeremiah Net-  
erer, Judge of the above-entitled Court, on January  
13, 1922, the libelants being represented by Messrs.  
Tucker & Hyland and the claimant by Messrs.  
Grosscup & Morrow, and the Court having heard  
and considered the evidence introduced in behalf  
of the parties hereto and having heard the argu-  
ment of counsel for both parties, and on January



19th having filed its decision, in writing, with directions that a decree be entered for the claimant,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the libelant take nothing by its libel; that claimant be dismissed and have judgment for its costs to be taxed against the libelant by the Clerk; that the surety on claimant's release of libel bond and the stipulator on claimant's stipulation for costs be, and they are each hereby relieved from further liability thereunder.

Done in open court this 30th day of January, 1922.

JEREMIAH NETERER,

District Judge. [40]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan 30, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [41]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Cor-  
poration,

Libelant,

vs.

Steamship “ADMIRAL GOODRICH,” Her  
Tackle, Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corpora-  
tion,

Claimant.

**Exception to Decree Dismissing Libel.**

Comes now the libelant and excepts to the de-  
cree dismissing the libel herein on the ground  
and for the reason that the same is not in accord-  
ance with the facts, and that the decree is erroneous  
and should have been for the libelant as prayed  
for in the amended libel.

WILMON TUCKER,  
IVAN L. HYLAND,  
FORD Q. ELVIDGE,

Proctors for Libelant.

The foregoing exception is hereby allowed.

Done in open court this 1st day of February,  
1922.

JEREMIAH NETERER,  
Judge.

Service of within exceptions this 1st day of Feb., 1922, and receipt of copy thereof, admitted.

GROSSCUP & MORROW,

Proctors for Claimant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 1, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [42]

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In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corporation,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle, Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corporation,

Claimant.

### **Notice of Appeal.**

Now comes the said libelant, Shell Company of California, and feeling aggrieved by the decree and opinion, to which it refers, which said decree was made on the 30th day of January, 1922, dismissing

the libel filed herein, do hereby appeal from said decree, with the object of securing a reversal of said decree and securing a decree for libelant's damages as claimed, to the Circuit Court of Appeals for the Ninth Circuit, and said libelant prays that its appeal may be allowed, and that the records of said cause may be duly transcribed and certified to said Circuit Court of Appeals, to be there heard upon the pleadings and proof as shown by said record, and that this Court will fix the penalty of the appeal bond to be given therein.

Dated at Seattle, Washington, this 1st day of February, 1922.

TUCKER & HYLAND,

Proctors for Libelant and Appellant. [43]

Service of within notice of appeal this 1st day of Feb., 1921, and receipt of copy thereof, admitted.

GROSSCUP & MORROW,

W. A. JOHNSON,

Proctors for Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 1, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [44]

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-  
ration,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corpora-  
tion,

Claimant.

**Petition for Appeal.**

To the Honorable Judges of the United States Cir-  
cuit Court of Appeals for the Ninth Circuit.

Shell Company of California, the libelant and ap-  
pellant herein, respectfully shows as follows:

I.

That on or about the 17th day of January, 1921,  
the libelant filed a libel in the District Court of the  
United States for the Western District of Washing-  
ton, Northern Division, against the above-named  
steamship "Admiral Goodrich," in a cause civil  
and maritime to recover the sum of \$2267.10 for oil  
furnished by the libelant from said steamship with

interest and costs, as by reference to the said amended libel will more fully appear.

## II.

That on or about the 12th of March, 1921, the claimant duly appeared and filed its answer to said amended libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear. [45]

## III.

That in January, 1922, the said cause came on for hearing before the Honorable Jeremiah Neterer, Judge of the District Court, and such proceedings were had that on the 25th day of January, 1922, the said Judge filed his opinion in writing, and thereafter, and on the 30th day of January, 1922, a final decree was made and entered in said suit, where it was adjudged that the libel be dismissed and that the claimant recover the sum of \$95.81 costs.

## IV.

The above-named libelant and appellant is advised and insists that said final decree is erroneous in that it does not decree payment of the libelant's claim with interests and costs.

## V.

For these reasons and othe reasons the above-named libelant and appellant appeals from said final decree to the United States Circuit Court of Appeals for the Ninth Circuit, and said appellant intends to seek a new decision on the law and on



the facts upon the pleadings and proof in said District Court, and upon new pleadings and proof to be introduced in this court, and prays that the record and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the Ninth Circuit, and that said decree be reversed, and the libellant be decreed payment of its claim, with interest and costs in this court and in the United States District Court.

WILMON TUCKER,  
IVAN L. HYLAND,  
FORD Q. ELVIDGE,  
Proctors for Libellant. [46]

Service of within petition this 1st day of Feb. 1922, and receipt of copy thereof, admitted.

GROSSCUP & MORROW,  
W. A. JOHNSON,  
Proctors for Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 1, 1922. F. M. Harshberger, Clerk. By S. E. Leitch. Deputy. [47]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpora-  
tion,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corpora-  
tion,

Claimant.

### **Assignments of Error on Appeal.**

And now on this day came the said libelant by  
Wilmon Tucker, Ivan L. Hyland and Ford Q. El-  
vidge, its proctors, and says that the decree in said  
cause is erroneous and against the just rights of  
the said libelant for the following reasons:

#### **I.**

Because the above-named libelant under the  
proof in the above-entitled cause has shown that it  
had a right to a lien for the oil furnished under  
the Act of Congress of May 23, 1910, which is now  
incorporated in the Merchant Marine of 1920.

#### **II.**

Because the evidence shows that then the

employees or officers of the libelant had notice that there was a charter upon the steamship "Admiral Goodrich," nor did any of the officers of the libelant corporation have any notice or knowledge of any of the provisions of such charter.

### III.

Because the oil was sold by the libelant to the "Admiral [48] Goodrich" as ordered by the manager of the steamer, and charged to the steamer and owners, and because the said steamship "Admiral Goodrich" was advertised as one of the Gulf Mail steamers in the "Guide."

### IV.

Because according to the law the burden was upon the claimant to show that the libelant knew or had reasonable cause to believe that a charter existed, and the mere fact that in the year 1918 and 1919 because the libelant furnished oil to the Pacific Steamship Company for the "Admiral Goodrich" in the Orient is not sufficient notice of ownership or of the chartering said vessel to exempt the steamship "Admiral Goodrich" from a lien for the oil so furnished.

### V.

Because the evidence shows that when the first oil was furnished to the "Admiral Goodrich" in the Orient it was prior to the time that the steamship "Admiral Goodrich" was owned by the Pacific Steamship Company.

## VI.

Because the evidence shows that the bill of sale to the Pacific Steamship Company of the steamship "Admiral Goodrich" was never filed in the custom-house in San Francisco or in any other place than in the custom-house in Portland, Maine; nor was the charter ever filed for record in any public office whatsoever.

## VII.

Because there is nothing shown in the letters and correspondence which has been entered in evidence in the above-entitled cause in any manner showing the ownership of the steamer "Admiral Goodrich."

## VIII.

Because the evidence taken as a whole shows conclusively [49] that the libelant did not have any notice of the ownership of said vessel nor of the existence of any charter and delivered the oil in good faith for the use of said vessel, and which was used upon the said vessel.

## IX.

Because the above-named claimant failed to sustain the burden of proof placed upon it by reason of the Act of Congress of May 23, 1910.

WHEREFORE, the said libelant prays that the said decree dismissing the amended libel be reversed, and that said Court may be directed to enter

a decree in accordance with the prayer of the amended libel.

WILMON TUCKER,  
IVAN L. HYLAND,  
FORD Q. ELVIDGE,

Proctors for Libelant.

Service of within assignments of error this 1st day of Feb. 1922, and receipt of copy thereof, admitted.

GROSSCUP & MORROW,  
W. A. JOHNSON,

Proctors for Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Feb. 1, 1922. F. M. Harshberger, Clerk. By S. E. Lietch, Deputy. [50]

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corporation,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corpora-  
tion,

Claimant.

**Order Allowing Appeal and Fixing Amount of  
Bond.**

The motion of Messrs. Wilmon Tucker, Ivan L. Hyland and Ford Q. Elvidge, proctors for the libelant and appellant herein,—

It is ORDERED, that an appeal to the United States Circuit Court of Appeals of the Ninth Circuit from the decree rendered and entered herein dismissing the amended libel of the said appellant, and awarding costs in favor of the claimant, be and the same is hereby allowed.

It is further ORDERED that the bond on appeal be and the same is hereby fixed at \$500.00, the same to be and act as a supersedeas bond, and also as a bond for costs on said appeal.

Done in open court this 1st day of February, 1922.

JEREMIAH NETERER,

Judge.

Service of within order this 1st day of Feb. 1922, and receipt of copy thereof, admitted.

GROSSCUP & MORROW,

W. A. JOHNSON,

Proctors for Claimant.



[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Feb. 1, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [51]

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY —No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpora-  
tion,

Libellant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corpora-  
tion,

Claimant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That the undersigned, Shell Company of California,  
as principal, and National Surety Company, as  
surety, are held and firmly bound unto the Pacific  
Steamship Company, the claimant, in the above-  
entitled cause, in the full and true sum of five  
hundred dollars (\$500.00), to be paid to it and its

successors and assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, administrators, assigns and successors in interest, jointly and severally, firmly by these presents.

Signed, sealed, executed and delivered this 1st day of February, 1922.

NOW, THEN, the condition of the above obligation is such that

WHEREAS, the above-named libelant, Shell Company of California, has caused an appeal to be taken to the said Circuit Court of Appeals of the Ninth Circuit from the final decree rendered and entered in favor of the above-named claimant on the 30th day of January, 1922, in the above-entitled cause, and in said appeal praying among other [52] things that the said decree may be reversed. If, then, the above-named appellant and libelant shall prosecute this appeal to effect and answer all damages and costs if they or either of them shall fail to make its appeal good, and shall pay and satisfy the decree and costs to be rendered, and abide by and satisfy any judgment, order or decree of the above-entitled court or of said United States Circuit Court of Appeals upon the determination of said appeal, and shall abide by and perform whatever decree may be rendered by said United States Circuit Court of Appeals in this cause or on the mandate of said court by the said District Court of the United States for the Western District of Wash-

ington, Northern Division, then this obligation to be void, otherwise to remain in full force and effect.

SHELL COMPANY OF CALIFORNIA,

By TUCKER & HYLAND,

Its Proctors.

NATIONAL SURETY COMPANY,

[Corporate Seal]

By ROBT. WHYTE,

Attorney-in-fact.

The above bond in all things approved this 1 day of February, 1922.

JEREMIAH NETERER,

Judge.

Due and timely service of a copy of this bond admitted this 1st day of February, 1922, and notice of filing of same admitted and all notice waived, and it is hereby agreed that the same may be by the above-entitled Court approved.

GROSSCUP & MORROW,

W. A. JOHNSON,

Proctors for Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 1, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [53]

In the United States District Court for the Western  
District of Washington, Northern Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Cor-  
poration,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

**Order Directing Sending Up of Original Exhibits,  
Depositions on File, and Copies Substituted  
for Certain Original Exhibits.**

The libelant, Shell Company of California, having filed its appeal which has been allowed, and having filed its praecipe for a transcript, and the proctors for the claimant agreeing hereto; it is

ORDERED that the clerk of the above-entitled court shall send to the clerk of the Circuit Court of Appeals all original exhibits attached to the depositions and the depositions on file and also the copies of the exhibits which have been substituted for original exhibits.

It is further ORDERED that the Clerk of the Circuit Court of Appeals need print only that portion of the exhibit which is the "Guide" of San Francisco, setting forth the title of the said newspaper, the date thereof and where published, and that portion of said publication referring to the

advertisement of the Gulf Mail Steamship Company.

Done in open court this 1st day of February, 1922.

JEREMIAH NETERER.

Judge.

Approved.

GROSSCUP & MORROW,  
W. A. JOHNSON,  
Proctors for Claimant. [54]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 1. 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [55]

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In the United States District Court for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corporation,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle, Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corporation,

Claimant.

**Praeceptum for Transcript of Record.**

To the Clerk of the Above-entitled Court:

You will please prepare a record on appeal in the above-entitled cause setting forth the following documents and pleadings, to wit:

The original and amended libel with the exhibits attached thereto. Answer to amended libel. Reply.

The testimony on the part of the claimant and any exhibits.

The depositions of Lawrence O'Connell and Cornelius F. Buckley and the claim of the owners for the "Admiral Goodrich" and the bond given by the Pacific Steamship Company to John M. Boyle March 27, 1917, the stipulation for the depositions on behalf of the claimant and respondent and the original exhibits.

The opinion of the Court on the merits.

The final decree and exception.

The petition for the appeal, together with the allowance thereof.

The notice of appeal.

Appeal bond.

Assignments of error.

Order directing the sending up of exhibits and depositions, etc. [56]

This praeceptum.

WILMON TUCKER,  
IVAN L. HYLAND,  
FORD Q. ELVIDGE,  
Proctors for Libellant.



Copy received Feb. 1st, 1922.

GROSSCUP & MORROW,

W. A. JOHNSON,

Proctors for Claimant.

[Indorsed]: Filed in the United States District Court. Feb. 1, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [57]

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In the District Court of the United States in and for the Western District of Washington, Northern Division.

No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corporation,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle, Apparel and Furniture,

Respondent.

**Certificate of Clerk U. S. District Court to Apostles on Appeal.**

United States of America,  
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this transcript of record, consisting of pages numbered from 1 to 57, inclusive,

to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitutes the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the proctor for libelants and appellants herein for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit [58] in the foregoing entitled causes, to wit:

Clerk's fees (Sec. 828 R. S. U. S.) for making record, certificate or return—130 fo.	
at 15¢ .....	\$19.50
Certificate of Clerk to transcript of record—	
4 folios at 15¢ .....	.60
Seal to said certificate .....	.20
Certificate of Clerk to original exhibits—3	
folios at 15¢ .....	.45
Seal to said certificates .....	.20

I further certify that the above costs for prepar-

ing and certifying this record, amounting to \$20.95, has been paid to me by attorneys for appellant.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 23d day of February, A. D. 1922.

[Seal] F. M. HARSHBERGER,  
Clerk of the United States District Court, Western  
District of Washington. [59]

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

IN ADMIRALTY—No. —.

SHELL COMPANY OF CALIFORNIA, a Corporation,

Libelant and Appellant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

PACIFIC STEAMSHIP COMPANY, a Corporation,

Claimant and Appellee.

**Citation.**

To the Above-mentioned Pacific Steamship Company, Claimant and Appellee, and to the Steamship "Admiral Goodrich," the Respondent:

WHEREAS, the libelant, Shell Company of California, a corporation, has appealed to the United States Circuit Court of Appeals from the decree lately rendered by the United States District Court for the Western District of Washington, Northern Division, dismissing the amended libel of the libelant against the Steamship "Admiral Goodrich," her tackle, apparel and furniture, and on said appeal have filed security as required by law;

THEREFORE, you are hereby cited to *appeal* before the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, within thirty days from the date hereof, to do and receive what may pertain to justice to be done in the premises.

Given under my hand at the City of Seattle, in the District above named, on the 2d day of February, 1922, and of the Independence of the United States the one hundred forty-seventh.

JEREMIAH NETERER,

Judge. [60]

Due service of the above citation is hereby admitted this 1st day of February, 1922.

GROSSCUP & MORROW,

W. A. JOHNSON,

Proctors for Appellee. [61]

[Endorsed]: No. ——. In the U. S. Circuit Court of Appeals for the Ninth Circuit. Shell Co. of Calif., Libellant and Appellant, vs. "Adm. Goodrich," Respondent, Pac. S. S. Co., Claimant Citation. Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 1, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

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[Endorsed]: No. 3838. United States Circuit Court of Appeals for the Ninth Circuit. Shell Company of California, a Corporation, Appellant, vs. Pacific Steamship Company, a Corporation of Portland, Maine, Claimant and Owner of the Steamship "Admiral Goodrich," Her Tackle, Apparel and Furniture, Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed February 27, 1922.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

**Libelant's Exhibit "A."**

[Advertisement Appearing in "San Francisco Guide," July 26, 1919.]

**GULF MAIL STEAMSHIP CO.**

Mexico, Central and South America.

via Los Angeles and San Diego.

S. S. Alliance.....	Aug. 20
(A Steamer) .....	Sep. 15
S. S. Admiral Goodrich (2500 ton, steel)....	Oct. 1
S. S. J. B. Stetson.....	Oct. 15
M/s Oregon (3500 ton, twin screw).....	Nov.
S. S. Nehalem.....	Dec.

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Ensenada, La Paz, Guaymas, Topolobampo,  
Mazatlan.

S. S. Alliance.....	Aug. 20
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Manzanillo, Salina Cruz, Guayaquil and Callao.

S. S. Admiral Goodrich.....	Aug. 10
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Apia and Pago Pago.

Sc. Zampa .....	—
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General Offices, 1 Drumm St. Phone—Sutter 3086.

E. L. BERTAUD, Traffic Manager.

[Endorsed]: #5530. Libelant's Ex. "A." Adm.  
1/13/22.

No. 3838. United States Circuit Court of Appeals for the Ninth Circuit. Filed Feb. 27, 1922.  
F. D. Monckton, Clerk.



In the United States District Court for the Western  
District of Washington, Northern Division.

No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpora-  
tion,

Libelant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle,  
Apparel and Furniture,

Respondent.

**Certificate of Clerk U. S. District Court to Original  
Exhibits.**

United States of America,  
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the attached envelope contains all of the original exhibits introduced in evidence at the trial of the above-mentioned cause in said District Court, with the exception of Respondent's Exhibits 17, 18, and 19, for which original exhibits copies have been substituted, and directed by order of said district court to be forwarded to the Circuit Court of Appeals for the Ninth Circuit to be considered by it in the hearing of the appeal herein, to wit:

Libelant's Exhibits marked "A" and "B," and

Respondent's Exhibits 1 to 12, inclusive, attached to deposition of Cornelius F. Buckley, Jr.

Respondent's Exhibits 13 to 16, attached to deposition of Lawrence O'Connell, exhibits 17, 18 and 19, being copies substituted for the originals.

I further certify that the said envelope contains all of the depositions filed and read as evidence in the above-entitled cause, to wit, the deposition of Cornelius F. Buckley, Jr., taken on behalf of libelant, and the deposition of Lawrence O'Connell taken on behalf of respondent.

WITNESS my hand and the seal of said District Court, at Seattle, Washington, this 21st day of February, 1922.

[Seal]

F. M. HARSHBERGER,

Clerk of United States District Court, Western District of Washington.

[Endorsed]: No. 3838. United States Circuit Court of Appeals for the Ninth Circuit. Filed Feb. 27, 1922. F. D. Monckton, Clerk.